

CHAPTER 13.  
AIR POLLUTION CONTROL BOARD.

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Title 10 - Chapter 13 - Air Pollution Control Board

§ 10.1-1300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advisory Board" means the State Advisory Board on Air Pollution.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board.

"Department" means the Department of Air Pollution Control.

"Director" or "Executive Director" means the Executive Director of the Department of Air Pollution Control.

"Owner" shall have no connotation other than that customarily assigned to the term "person," but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Special order" means a special order issued under § 10.1-1309.

§ 10.1-1301. State Air Pollution Control Board; membership; terms; vacancies.

The State Air Pollution Control Board shall be composed of five members appointed by the Governor for four-year terms. Vacancies other than by expiration of term shall be filled by the Governor by appointment for the unexpired term.

§ 10.1-1302. Qualifications of members of Board.

The members of the Board shall be citizens of the Commonwealth and shall be selected from the Commonwealth at large on the basis of merit without regard to political affiliation. At least a majority of members

appointed to the Board shall represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders of the Board. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those which may be required by federal statute or regulations of the United States Environmental Protection Agency. The provisions of this section shall be in addition to the requirements of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.).

§ 10.1-1303. Chairman of the Board; Executive Director; cooperation of state agencies.

The Board shall elect its own chairman. The Governor shall appoint an Executive Director who shall serve as executive officer of the Board, but shall not serve as a member thereof. The Board may call upon any state department or agency for technical assistance. All departments and agencies of the Commonwealth shall, upon request, assist the Board in the performance of its duties.

§ 10.1-1304. Meetings of Board; quorum.

The Board shall meet at least once every three months. Special meetings may be held at any time or place to be determined by the Board upon the call of the chairman or upon written request of any two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting. Three members of the Board shall constitute a quorum for the transaction of business.

§ 10.1-1305. Records of proceedings of Board.

The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Director and available for public inspection.

§ 10.1-1306. Inspections, investigations, etc.

The Board shall make, or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of the appropriations, study grants, funds, or personnel which are available for the purposes of this chapter, including the achievement and maintenance of such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions.

§ 10.1-1307. Further powers and duties of Board.

A. The Board shall have the power to control and regulate its internal affairs; initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, it may in its discretion grant local variances therefrom, if it finds after an investigation

and hearing that local conditions warrant. If local variances are permitted, the Board shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board after a hearing determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least thirty days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, it shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce its regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of its orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The Board may designate one of its members, the Director, or a staff assistant to conduct the hearings provided for in this chapter. A record of the hearing shall be

made and furnished to the Board for its use in arriving at its decision.

G. The Board shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

§ 10.1-1307.01. Further duties of Board; localities particularly affected.

After June 30, 1994, before promulgating any regulation under consideration, granting any variance to an existing regulation, or issuing any permit for the construction of a new major source or for a major modification to an existing source, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each which may be emitted and shall list the type and quantity of any fuels to be used.
2. Mail the notice to the chief elected official and chief administrative officer and the planning district commission for those localities.

Written comments shall be accepted by the Board for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

§ 10.1-1307.1. Department continued; appointment of Director.

A. The Department of Air Pollution Control is continued as an agency within the Secretariat of Natural Resources. The Department shall be headed by a Director appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

B. In addition to the powers designated elsewhere in this chapter, the Department shall have the power to:

1. Administer the policies and regulations established by the Board pursuant to this chapter;
2. Employ such personnel as may be required to carry out the duties of the Department;
3. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, agencies, and governmental subdivisions of the Commonwealth;
4. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable; and
5. Perform all acts necessary or convenient to carry out the purposes of this chapter.

§ 10.1-1307.2. Powers and duties of the Executive Director.

A. The Executive Director, under the direction and control of the Governor, shall exercise such powers and perform such duties as are conferred or imposed upon him by the law and shall perform such other duties required of him by the Governor and the Board.

B. The Executive Director may be vested with the authority of the Board when it is not in session, subject to such regulations or delegation as may be prescribed by the Board.

In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

C. In addition to the powers designated elsewhere in this chapter, the Director shall have the following general powers:

1. Supervise and manage the Department;
2. Prepare and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
3. Provide investigative and such other services as needed by the Department to enforce applicable laws and regulations;
4. Provide for the administrative functions and services of the Department;
5. Provide such office facilities as will allow the Department to carry out its duties; and
6. Assist the citizens (including corporate citizens) of the Commonwealth by providing guidelines, time tables, suggestions and in general being helpful to applicants seeking state and federal air pollution control permits.

§ 10.1-1307.3. Executive Director to enforce laws.

The Executive Director or his duly authorized representative shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations and orders of the Board as are conferred upon him by the Board;
2. Investigate any violations of this chapter and regulations and orders of the Board;
3. Require that air pollution records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulations and orders of the Board;
4. Upon presenting appropriate credentials to the owner, operator, or agent in charge:
  - a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth; and
  - b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a

reasonable manner, without prior notice, unless such notice is authorized by the Director or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Director shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection; and

5. Temporarily suspend the enforcement of any regulation or permit requirement applicable to any part of an electrical generation and transmission system, whether owned or contracted for, when a public electric utility providing power within the Commonwealth so requests and has suffered a force majeure event as defined in subdivision 7 of § 59.1-21.18:2.

§ 10.1-1308. Regulations.

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation, shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of

present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 9-6.15 et seq.).

B. Any regulation requiring the use of stage 1 vapor recovery equipment shall require the use of such equipment only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment areas for the pollutant ozone.

§ 10.1-1309. Issuance of special orders.

A. The Board shall have the power to issue special orders to:

(i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;

(ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the Board, to construct such facilities in accordance with or otherwise comply with, such approved plans;

(iii) owners who have violated or failed to comply with the terms and provisions of any Board order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies; and

(v) require any owner to comply with the provisions of this chapter and any Board decision.

B. Such special orders are to be issued only after a hearing with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the Board find that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing

an emergency special order directing the owner to cease such pollution immediately, and shall within ten days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the Board finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10.1-1316 or § 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the Board, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the Board's authority to proceed against such owner directly under § 10.1-1316 or § 10.1-1320 without the prior issuance of an order, special or otherwise.

§ 10.1-1309.1. Special orders; penalties. The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ 9-6.14:1 et seq.) requiring that an owner file with the Board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate. The Board shall give due consideration to any plan submitted by the

owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section. For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

§ 10.1-1310. Decision of Board pursuant to hearing.

Any decision by the Board rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the Board's decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

§ 10.1-1310.1. Notification of local government.

Upon determining that there has been a violation of this chapter or any regulation promulgated under this chapter or order of the Board, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

§ 10.1-1311. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

B. Upon a determination of the amount by the Board, the Board shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders,



payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

§ 10.1-1312. Air pollution control districts.

A. The Board may create, within any area of the Commonwealth, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the Board on its own motion or upon request of the governing body or bodies of the area involved.

B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the Board from lists of recommended nominees submitted by the respective governing bodies of each locality, all or a portion of which are included in the district. The number of members on each committee shall be in the discretion of the Board. When a district includes two or more localities or portions thereof, the Board shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and reimbursement of expenses to the members and may appropriate funds therefore. The portion of such payment to be borne by each locality shall be prescribed by agreement.

C. The local committee is empowered to observe compliance with the regulations of the Board and report instances of noncompliance to the Board, to conduct educational programs relating to air pollution and its effects, to assist the Department in its air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the Board.

D. The governing body of any locality, wholly or partially included within any such

district, may appropriate funds for use by the local committee in air pollution control and studies.

§ 10.1-1313. State Advisory Board on Air Pollution.

The Board is authorized to name qualified persons to a State Advisory Board on Air Pollution.

§ 10.1-1314. Owners to furnish plans, specifications and information.

Every owner which the Board has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the Board furnish such plans, specifications and information as may be required by the Board in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

§ 10.1-1314.1. Protection of trade secrets.

Any information, except emissions data, reported to or otherwise obtained by the Director, the Board, or the agents or employees of either which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this chapter or the federal Clean Air Act or regulations and orders of the Board. It shall be the duty of each owner to notify the Director or his representatives of the existence of trade secrets when he desires the protection provided herein.

§ 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the Board or any member, agent or employee thereof, when duly authorized by the Board, may at reasonable times enter any establishment or upon any property, public or private, to obtain

information or conduct surveys or investigations.

§ 10.1-1316. Enforcement and civil penalties.

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any Board regulation or order, or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any Board regulation or order, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board regulation or order, or any provision of this chapter, or any permit condition, the Board may provide, in any

order issued by the Board against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

§ 10.1-1317. Judicial review of regulations of Board.

The validity of any regulation may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 10.1-1318. Appeal from decision of Board.

A. Any owner aggrieved by a final decision of the Board under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

B. Any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under § 10.1-1322 and who has exhausted all available administrative remedies for review of the Board's decision, shall be entitled to judicial review of the Board's decision in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

§ 10.1-1319. Appeal to Court of Appeals.  
The Commonwealth or any party aggrieved by any final decision of the judge shall have, regardless of the amount involved, the right to appeal to the Court of Appeals. The procedure shall be the same as that provided by law concerning appeals and supersedeas.

§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.  
Any owner knowingly violating any provision of this chapter, Board regulation or order, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than \$10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense. Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

§ 10.1-1320.1. Duty of attorney for the Commonwealth.  
It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter or any regulation or order of the Board, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

§ 10.1-1321. Local ordinances.  
A. Existing local ordinances adopted prior to July 1, 1972, shall continue in force; however, in the event of a conflict between a Board regulation and a local ordinance adopted prior to July 1, 1972, the Board regulation shall govern, except when the conflicting local ordinance is more stringent.  
B. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution after June 30, 1972, shall first obtain the approval of the Board as to the provisions of the ordinance or amendment. No ordinance or amendment,

except an ordinance or amendment pertaining solely to open burning, shall be approved by the Board which regulates any emission source that is required to register with the Board or to obtain a permit pursuant to this chapter and the Board's regulations.

§ 10.1-1321.1. When application for permit considered complete.

A. No application for a permit for a new or major modified stationary air pollution source shall be considered complete unless the applicant has provided the Director with notification from the governing body of the county, city, or town in which the source is to be located that the location and operation of the source are consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

B. The governing body shall inform in writing the applicant and the Department of the source's compliance or noncompliance not more than forty-five days from receipt by the chief executive officer, or his agent, of a request from the applicant.

C. Should the governing body fail to provide written notification as specified in subsection B of this section, the requirement for such notification as specified in subsection A of this section is waived.

D. The provisions of this section shall apply only to applications received after July 1, 1990.

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the Board, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air

pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of twenty-five dollars per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On January 1, 1993, and December 1 of every even-numbered year thereafter, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Conservation and Natural

Resources and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs which may be required by the federal government and administered by the Board, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

§ 10.1-1322.1. Air Pollution Permit Program Fund established; use of moneys.

A. Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to §§ 10.1-1322 and 10.1-1322.2 shall be paid into the state treasury and credited to a special nonreverting fund known as the Air Pollution Permit Program Fund, which is hereby established.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Department of Air Pollution Control is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of carrying out the provisions of this chapter

under the direction of the Executive Director.

D. An accounting of moneys received by and distributed from the permit fund shall be kept by the Comptroller and furnished upon request to the Governor or the General Assembly.

§ 10.1-1322.2. Preliminary program permit fees.

A. Prior to the adoption and implementation of a permit fee schedule as authorized under subsection B of § 10.1-1322, the owners of sources of air pollution which are registered by the Department in accordance with the regulations of the Board are assessed preliminary program permit fees on an annual basis in accordance with subsection C of this section. These fees shall be deposited in the Air Pollution Permit Program Fund established by § 10.1-1322.1. The Department shall issue annual notices of the fees to owners of registered sources on or before August 1 of each fiscal year. Each notice of a fee shall include a summary of the data on which the fee is based. Fees shall be payable thirty days after receipt of notice. Failure to make timely payment within ninety days shall be grounds to institute a collection action against the owner of the registered source by the Attorney General.

B. The provisions of this section shall be applicable to all owners in cases where the aggregate of all pollutants emitted (as calculated or estimated) by all sources owned or controlled by the same owner, or by any entity controlling, controlled by, or under common control with such owner, are greater than 500 tons per year. Any individual stationary source with actual emissions (as calculated or estimated) of less than 100 tons per year shall not be subject to a fee under subsection C of this section. Determination of the tons per year of air pollution shall be based on all actual pollutants emitted during the prior calendar year.

C. The Department shall assess preliminary program permit fees uniformly, based on the aggregate of all pollutants emitted (as calculated or estimated) during the calendar

year immediately preceding the fiscal year, in an amount calculated to produce revenue totaling \$3.1 million. In no instance shall a preliminary fee assessed in any calendar year exceed \$100,000 per source. The establishment of a fee schedule under this subsection shall be exempt from the provisions of Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of Title 9.

D. Notices of preliminary program permit fees shall not be issued for any fiscal year in which the fees for the operating permit program are in effect in accordance with regulations adopted pursuant to subsection B of § 10.1-1322. Should a permit program fee become due and payable during a fiscal year when the owner has paid a preliminary program permit fee, the permit program fee shall be reduced in an amount equal to the pro rata share of the preliminary program permit fee for the months remaining in the fiscal year. The pro rata share is determined by dividing the fee into twelve equal parts and multiplying that sum by the number of months remaining in the fiscal year.

E. Utilization of the fees collected pursuant to this section shall be limited to the agency's direct and indirect costs of processing permits in order to more efficiently issue permits and to prepare for and begin implementation of the federal Clean Air Act requirements. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

§ 10.1-1322.3. Emissions trading programs; emissions credits; Board to promulgate regulations.

In accordance with § 10.1-1308, the Board may promulgate regulations to provide for emissions trading programs to achieve and maintain the National Ambient Air Quality Standards established by the United States Environmental Protection Agency, under the federal Clean Air Act. The regulations shall create an air emissions banking and trading

program for the Commonwealth, to the extent not prohibited by federal law, that results in net air emission reductions, creates an economic incentive for reducing air emissions, and allows for continued economic growth through a program of banking and trading credits or allowances. The regulations applicable to the electric power industry shall foster competition in the electric power industry, encourage construction of clean, new generating facilities, provide new source set-asides of five percent for the first five plan years and two percent per year thereafter, and provide an initial allocation period of five years. In promulgating such regulations the Board shall consider, but not be limited to, the inclusion of provisions concerning (i) the definition and use of emissions reduction credits or allowances from mobile and stationary sources, (ii) the role of offsets in emissions trading, (iii) interstate or regional emissions trading, (iv) the mechanisms needed to facilitate emissions trading and banking, and (v) the role of emissions allocations in emissions trading. No regulations shall prohibit the direct trading of air emissions credits or allowances between private industries, provided such trades do not adversely impact air quality in Virginia.

§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials. Unless required by the federal government, no additional permit or permit modifications shall be required by the Board, for the use, by any source, of an alternative fuel or raw material, if the owner demonstrates to the Board that as a result of trial burns at their facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

§ 10.1-1323. Small business stationary source technical and environmental compliance assistance program. A. There is hereby created within the Department a small business stationary source technical and environmental

compliance assistance program to facilitate compliance by small business stationary sources with the provisions of the federal Clean Air Act. The program shall be administered by the Department.

B. Except as provided in subsections C and D of this section, any stationary source is eligible for the program that:

1. Is owned or operated by a person that employs 100 or fewer individuals;
2. Is a small business concern as defined in the federal Small Business Act;
3. Is not a major stationary source;
4. Does not emit fifty tons or more per year of any regulated pollutant; and
5. Emits less than seventy-five tons per year of all regulated pollutants.

C. Upon petition by a source owner, the Board may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subdivision B 3, B 4 or B 5 of this section but which does not emit more than 100 tons per year of all regulated pollutants.

D. The Board, in consultation with the Administrator of the United States Environmental Protection Agency and the Administrator of the United States Small Business Administration and after providing notice and opportunity for public hearing, may exclude as a small business stationary source for purposes of this article any category or subcategory of sources that the Board determines to have sufficient technical and financial capabilities to meet the requirements of the federal Clean Air Act without the application of this section.

§ 10.1-1324. Office of Small Business Ombudsman created.

An Office of Small Business Ombudsman is hereby created within the Department. The Office shall be headed by an ombudsman appointed by the Executive Director. The Small Business Ombudsman shall provide direct oversight of the small business stationary source technical and environmental compliance assistance program.

§ 10.1-1325. Small Business Environmental Compliance Advisory Board created; membership.

The Small Business Environmental Compliance Advisory Board is hereby created. It shall be composed of seven members appointed for four years or until their successors have been appointed. Any vacancy should be filled for the duration of the term. Appointments shall be made as follows:

1. Two members, who are not owners, or representatives of owners, of small business stationary sources, appointed by the Governor to represent the general public;
2. Two members appointed by the House of Delegates who are owners, or who represent owners, of small business stationary sources (one member each by the Speaker of the House of Delegates and Minority Leader of the House of Delegates);
3. Two members appointed by the Senate who are owners, or who represent owners, of small business stationary sources (one member each by the Majority and Minority Leaders of the Senate); and
4. One member appointed by the Executive Director.

§ 10.1-1326. Duties of the Advisory Board. The Small Business Environmental Compliance Advisory Board shall:

1. Render advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;
2. Make periodic reports to the General Assembly and the Administrator of the U.S. Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the federal Paperwork Reduction Act, the federal Regulatory Flexibility Act, and the federal Equal Access to Justice Act;
3. Review information for small business stationary sources to ensure that such

information is understandable by the layperson; and

4. Develop and disseminate reports and advisory opinions through the Office of Small Business Ombudsman.

Title 46.2 - Chapter 10 - Article 22 -  
Emissions Inspections

§ 46.2-1176. Definitions.

The following words and phrases when used in this article shall have the following meanings except where the context clearly indicates a different meaning:

"Basic, test and repair program" means a motor vehicle emissions inspection system established by regulations of the Board which shall designate the use of a BAR-90, designed so it may be upgraded in the future to an ASM 50-15 (acceleration simulation mode or method), as the only authorized testing equipment. Only those computer software programs and emissions testing procedures necessary to comply with the applicable provisions of Title I of the Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs. "Board" means the State Air Pollution Control Board.

"Certificate of emissions inspection" means a document, device, or symbol, prescribed by the Director and issued pursuant to this article, which indicates that (i) a motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this article; (ii) the requirement of compliance with such emissions standards has been waived; or (iii) the motor vehicle has failed such emissions inspection.

"Director" means the Director of the Department of Environmental Quality.

"Emissions inspection station" means any facility or portion of a facility that has obtained an emissions inspection station permit from the Director authorizing the facility to perform emissions inspections in accordance with this article.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection system established by regulations of the Board that shall designate the use of the ASM 50-15 (acceleration simulation mode or method) as the only authorized testing equipment. Only those computer software programs and emissions testing procedures

necessary to comply with applicable provisions of Title I of the Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the Director.

"Motor vehicle" means any vehicle that:

1. Is designed for the transportation of persons or property; and
2. Is powered by an internal combustion engine.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Referee station" means an inspection facility operated or used by the Department of Environmental Quality (i) to determine program effectiveness, (ii) to resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) to provide such other technical support and information, as appropriate, to emissions inspection stations and vehicle owners.

"Remote sensing" means the measurement of motor vehicle emissions through electronic or light-sensing equipment from a remote location such as the roadside. Remote sensing equipment may include devices to detect and record the vehicle's registration or other identification numbers.

"Test and repair" means motor vehicle emissions inspection facilities that perform official motor vehicle emissions inspections and may also perform vehicle repairs. No regulation of the Board pertaining to test and repair shall bar inspection facilities from also performing vehicle repairs.

§ 46.2-1177. Emissions inspection program. The Director shall administer an emissions inspection program. Such program shall require biennial inspections of motor vehicles at official emissions inspection stations in accordance with this article and may require additional inspections of motor vehicles that have been shown by on-road



testing to exceed emissions standards established by the Board.

The emissions inspections required in § 46.2-1178 shall not apply to any:

1. Vehicle powered by a clean special fuel as defined in § 58.1-2101, provided provisions of the federal Clean Air Act permit such exemption for vehicles powered by a clean special fuel;
2. Motorcycle;
3. Vehicle which, at the time of its manufacture was not designed to meet emissions standards set or approved by the federal government;
4. Antique motor vehicle as defined in § 46.2-100 and licensed pursuant to § 46.2-730; or
5. Vehicle for which no testing standards have been adopted by the Board.

§ 46.2-1178. Administration and scope of emissions inspection program.

A. Except as otherwise provided in this section, the emissions inspection program provided for in this article shall apply to motor vehicles having actual gross weights of 8,500 pounds or less that are registered in the Counties of Arlington, Fairfax, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The provisions of this subsection shall expire when the provisions of subsection C of this section become effective.

B. An emissions inspection program as required by regulations adopted by the Board under this article shall apply to motor vehicles that have actual gross weights of 8,500 pounds or less and are registered or operated primarily, as defined by the Board in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.), in the Counties of Chesterfield, Hanover, and Henrico and the Cities of Colonial Heights, Hopewell, and Richmond. Such emissions inspection program shall be a basic, test and repair program with the greatest number of inspection facilities consistent with the consumer protection and fee provisions herein as consistent with the Clean Air Act.

The provisions of this subsection shall apply but not necessarily be limited to (i) motor vehicles owned by governmental entities, (ii) motor vehicles owned by military personnel residing in those localities, (iii) motor vehicles owned by leasing or rental companies, and (iv) motor vehicles owned or leased by employees of the federal government and operated on a federal installation. The provisions of this subsection shall become effective July 1, 1995. The Board may promulgate regulations to implement the provisions of this article, but such regulations shall not require inspections in the localities mentioned in this subsection prior to the later of: (i) July 1, 1996; or (ii) the date on which the Federal Environmental Protection Agency, pursuant to the Clean Air Act, formally and in writing approves this program for such localities or on such later date as may be provided by regulations of the Board.

C. The emissions inspection program provided for in this subsection shall be a test and repair enhanced emissions inspection program with the greatest number of inspection facilities consistent with the consumer protection and fee provisions herein and may include on-road testing and remote sensing devices. Any enhanced emissions inspection program provided for in this article shall apply to motor vehicles that have actual gross weights of 10,000 pounds or less and are registered or operated primarily, as defined by the Board in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) in the Counties of Arlington, Fairfax,, Loudoun, Prince William, and Stafford and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The provisions of this subsection shall apply but not necessarily be limited to (i) motor vehicles owned by governmental entities, (ii) motor vehicles owned by military personnel residing in those localities, (iii) vehicles owned by leasing or rental companies, and (iv) motor vehicles owned or leased by employees of the federal

government and operated on a federal installation.

The provisions of this subsection shall be effective January 1, 1996, or on such later date as may be provided by regulations of the Board. However, the provisions of this subsection may become effective immediately provided that (i) the federal Environmental Protection Agency, pursuant to the Clean Air Act, formally and in writing approves the program for such localities, (ii) the Governor determines in writing that expedited promulgation of such regulations is in the best interest of the Commonwealth, determining that such shall constitute an "emergency situation" pursuant to § 9-6.14:4.1, and (iii) the Governor authorizes the Board to promulgate the regulations as emergency regulations in accordance with this section.

D. Any emissions inspection program regulations in effect at the time the 1995 amendments to this section become effective shall remain in effect until the Board promulgates new regulations or amends or repeals existing regulations in accordance with this section.

§ 46.2-1178.1. On-road testing of motor vehicle emissions; authority to adopt regulations; civil charges.

A. The emissions inspection program authorized by § 46.2-1177 and provided for in § 46.2-1178 shall include on-road testing of motor vehicle emissions. The Board may promulgate regulations establishing on-road testing requirements including, but not limited to, collecting of data and information necessary to comply with the federal Clean Air Act Amendments of 1990, random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards adopted by the Board.

B. If an emissions test performed pursuant to this section indicates that a motor vehicle does not meet emissions standards established by the Board, the Board may collect from the owner of the vehicle a civil charge based on actual emissions. The

Board shall establish a schedule of civil charges to be collected pursuant to this section. Such civil penalties shall not exceed \$450 using 1990 as the base year and adjusted annually by the Consumer Price Index. The schedule of charges and their assessment shall be established by regulations promulgated to be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

C. Civil charges assessed pursuant to this section shall be waived by the Board if, within ninety days of notice of the violation, the vehicle's owner provides proof that the vehicle (i) since the date of the violation, has passed a vehicle emissions test as provided in § 46.2-1178, (ii) qualifies for an emissions inspection waiver as provided in § 46.2-1181, or (iii) has qualified for an emissions inspection waiver as provided in § 46.2-1181 within the twelve months prior to the violation.

D. Civil charges collected pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Vehicle Emissions Inspection Program Fund pursuant to § 46.2-1182.2.

E. If on-road testing indicates that a motor vehicle does not exceed emissions standards adopted by the Board for on-road testing pursuant to § 46.2-1179, such testing may be considered proof of compliance for the purposes of § 46.2-1183 and may be considered to satisfy the requirements of § 46.2-1177 for a biennial inspection. The Board shall establish criteria under which such testing shall satisfy the requirements of § 46.2-1183.

§ 46.2-1179. Board to adopt emissions standards.

The Board shall adopt emissions standards necessary to implement the emissions inspection program provided for in this article.

§ 46.2-1179.1. Board to adopt clean alternative fuel fleet standards for motor vehicles; penalty.

A. For purposes of this section:

"Clean alternative fuel" means any fuel, including methanol, ethanol, other alcohols, reformulated gasoline, diesel, natural gases, liquified petroleum gas, hydrogen, and electricity or other power source used in a clean fuel vehicle that complies with the standards applicable to such vehicle under the federal Clean Air Act when using such fuel or other power source. In the case of a flexible fuel vehicle or dual fuel vehicle, "clean alternative fuel" means only a fuel for which the vehicle was certified when operating on clean alternative fuel.

"Fleet" means any centrally fueled fleet of ten or more motor vehicles owned or operated by a single entity. "Fleet" does not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers, motor vehicles used for manufacturer product tests, law-enforcement and other emergency vehicles, or nonroad vehicles, including farm and construction vehicles.

B. The Board may adopt by regulation motor vehicle clean alternative fuel fleet standards consistent with the provisions of Part C of Title II of the federal Clean Air Act for model years beginning with the model year 1998 or the first succeeding model year for which adoption of such standards is practicable. If adoption and implementation by the Board of an equivalent air pollution reduction program is approved by the federal Environmental Protection Agency, the regulation and program authorized by this section shall not become effective. Such regulations shall contain the minimum phase-in schedule contained in § 246 (b) of Part C of Title II of the Clean Air Act. However, nothing in this section shall preclude affected fleet owners from exceeding the minimum requirements of the federal Clean Air Act. Beginning in 1995 and upon adoption of the standards by the Board, the Board shall require the fleet owned by the federal government to meet the clean alternative fuel fleet standard and phase-in schedule established by the Board. If necessary to meet the Board's standards and phase-in schedule, the Board shall require fleets owned by the federal

government to convert a portion of existing fleet vehicles to the use of clean alternative fuels as defined by the federal Clean Air Act. The standards specified in this subsection shall apply only to (i) motor vehicles registered in localities designated by the federal Environmental Protection Agency, pursuant to the federal Clean Air Act, as serious, severe, or extreme air quality nonattainment areas, or as maintenance areas formerly designated serious, severe, or extreme and (ii) motor vehicles not registered in the above-mentioned localities, but having either (a) a base of operations or (b) a majority of their annual travel in one or more of those localities.

C. An owner of a covered fleet shall not use any motor vehicle or motor vehicle engine which is manufactured during or after the first model year to which the standards specified in subsection A of this section are applicable, if such vehicle or engine is registered or has its base of operations in the localities specified in subsection B of this section and has not been certified in accordance with regulations promulgated by the Board. The Board may promulgate regulations providing for reasonable exemptions consistent with the provisions of Part C of Title II of the federal Clean Air Act. Motor vehicles exempted from the provisions of this section shall forever be exempt.

D. Any person that violates the requirements of this section or any regulation adopted hereunder shall be subject to the penalties in §§ 46.2-1187 and 46.2-1187.2. Each day of violation shall be a separate offense, and each motor vehicle shall be treated separately in assessing violations.

E. In order to limit adverse economic and administrative impacts on covered fleets operating both in Virginia and in neighboring states, the Department of Environmental Quality shall, to the maximum extent practicable, coordinate the provisions of its regulations promulgated under this section with neighboring states' statutes and regulations relating to use of

clean alternative fuels by motor vehicle fleets.

F. The State Corporation Commission, as to matters within its jurisdiction, and the Department of Environmental Quality, as to other matters, may, should they deem such action necessary, promulgate regulations necessary or convenient to ensure the availability of clean alternative fuels to operators of fleets covered by the provisions of this section. The State Air Pollution Control Board may delegate to the Commissioner of Agriculture its authority under the Air Pollution Control Law of Virginia, Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, to implement and enforce any provisions of its regulations covering the availability of clean alternative fuels. Upon receiving such delegation, the authority to implement and enforce the regulations under the Air Pollution Control Law of Virginia shall be vested solely in the Commissioner, notwithstanding any provision of law contained in Title 10.1, except as provided in this section. The State Air Pollution Control Board, in delegating its authority under this section, may make the delegation subject to any conditions it deems appropriate to ensure effective implementation of the regulations according to the policies of the State Air Pollution Control Board.

§ 46.2-1180. Board to adopt regulations; exemption of certain motor vehicles.

A. The Board is authorized to adopt such regulations for purposes of implementation, administration, and regulation as may be necessary to carry out the provisions of this article. Such regulations shall include but not necessarily be limited to requirements for the following:

1. The collection of data and maintenance of records of emissions inspection test results and vehicle repairs under this article and the inspection results of the air pollution control systems or devices in accordance with § 46.2-1048 and regulations of the Board.
2. The calibration of emissions testing equipment by emissions inspection stations

to ensure conformance with the standards adopted by the Board.

3. The establishment of appropriate referee stations.

4. The permitting of emissions inspection stations and fleet emissions inspection stations and the licensing of emissions inspectors, including the suspension or revocation of such permit or license.

5. The protection of consumer interests in accordance with regulations of the Board concerning, but not limited to: (i) the number of inspection facilities and inspection lanes relative to population density, (ii) the proximity of inspection facilities to motor vehicle owners, (iii) the time spent waiting for inspections, and (iv) the days and hours of operation of inspection facilities.

6. The prohibition of any manufacturer or distributor of emissions testing equipment from directly or indirectly owning or operating any emissions testing facility or having any direct or indirect financial interest in any such facility other than the leasing of or providing financing for equipment related to emissions testing.

7. The certification of motor vehicle emissions repair technicians and emissions repair facilities, including the suspension or revocation of such certification. The regulations shall apply to emissions repair technicians and emissions repair facilities that conduct emissions-related repairs for vehicles that have failed a motor vehicle emissions test according to regulations adopted by the Board.

The Director shall administer these regulations and seek compliance with conditions of any contractual arrangements which the Commonwealth may make for inspection services related to air pollution control.

B. Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection, and the four immediately preceding model years being held in a motor vehicle dealer's inventory for resale may be registered in the localities mentioned in subsection C of § 46.2-1178 for up to one

year without being subject to an emissions inspection, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the time of resale.

C. No motor vehicle for which the Board has not adopted emissions inspection standards shall be subject to an emissions inspection.

D. The Director may enter into bilateral agreements with other states providing for assistance in enforcing each state's statutes and regulations relating to motor vehicle emissions and motor vehicle emissions programs as to vehicles registered in one state and operated in another. Subject to such bilateral agreement, owners of motor vehicles registered in other states and operated in Virginia shall be subject to the on-road testing provisions of § 46.2-1178.1, and shall be notified of test results and assessment of civil charges for noncompliance with emissions standards adopted by the Board. Such notification shall also be provided to the appropriate motor vehicle agency in the state of registration.

§ 46.2-1181. Emissions inspection; cost of repairs; waivers.

A. A motor vehicle shall qualify for an emissions inspection waiver in the event that such vehicle has failed an initial inspection and subsequently failed a reinspection if the owner provides written proof that (i) at least the amount specified in this section has been spent by the owner on the maintenance and repair of the vehicle's engine and emission control system and related equipment and (ii) any emission control system or part thereof which has been removed, damaged, or rendered inoperable by any act enumerated in § 46.2-1048 has been replaced and restored to operating condition.

B. The Director shall establish and revise, as necessary, specifications and procedures for motor vehicle maintenance and repair of pollution control devices and systems.

C. For the purposes of subsection A of this section:

For motor vehicles subject to emissions inspections under subsection A of § 46.2-1178, cost limitations on repairs under the emissions inspection program, including parts and labor, but excluding costs of repairs covered by warranties shall be \$175 for pre-1980 model vehicles and \$200 for 1980 and newer vehicles.

For motor vehicles subject to emissions inspections under subsection C of § 46.2-1178, the cost limitations shall be a base amount of \$450 per vehicle using 1990, or a later date if allowed by federal regulations and approved by the Board, as the base year and annually adjusted by the Consumer Price Index. The Board may phase in waiver amounts.

Repairs credited toward this waiver must be done by a repair technician certified in accordance with § 46.2-1180. Repairs shall include parts and labor.

D. For the purposes of subsection A of this section, for motor vehicles subject to emissions inspections under subsection B of § 46.2-1178, the cost limitations on repairs under the emissions inspection program, including parts and labor but excluding costs of repairs covered by warranties, shall be:

1. \$75 for pre-1981 vehicles; and
2. \$200 for 1981 and newer vehicles.

§ 46.2-1182. Emissions inspection fees; exemption.

Emissions inspection stations performing emissions inspections under subsection A of § 46.2-1178 may charge \$11.40 for each emissions inspection, but such charge shall not be mandatory. Any such fee shall be paid to the emissions inspection station. Each emissions inspection station performing emissions inspections under subsection B of § 46.2-1178 may charge for each emissions inspection an amount not to exceed \$17.00. Any such fee shall be paid to and retained by the emissions inspection station.

Beginning at such date upon which the program becomes an enhanced emissions program, each emissions inspection station performing emissions inspections under subsection C of § 46.2-1178 may charge an

amount not to exceed \$20.00 for each emissions inspection. Any such fee shall be paid to and retained by the emissions inspection station.

Within fourteen days of an initial failure of an emissions inspection, the vehicle's owner shall be entitled to one free reinspection at the station that conducted the original inspection.

§ 46.2-1182.1. Additional registration fee; exemption.

Beginning July 1, 1994, in addition to any other fees imposed, at the time of registration by the Department of Motor Vehicles, the owner of any motor vehicle subject to registration in Virginia and subject to the program provided for in this article by virtue of the locality in which it is registered shall pay two dollars per year. Beginning July 1, 1995, or later if required by regulation of the Board, owners of motor vehicles which are subject to the program by virtue of the location of their base of operation or the location where they are primarily operated shall remit a fee of two dollars per vehicle per year to the Department of Environmental Quality. Payment shall be made according to procedures and on a schedule prescribed by the Department of Environmental Quality. State and local governmental units and agencies shall be exempt from the payment of fees under this subsection.

§ 46.2-1182.2. Vehicle Emissions Inspection Program Fund established; use of moneys. A special nonreverting fund known as the Vehicle Emissions Inspection Program Fund is hereby established in the state treasury. Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to § 46.2-1182.1 shall be paid into the treasury and credited to the Vehicle Emissions Inspection Program Fund.

No moneys remaining in the Fund at the end of each fiscal year shall revert to the general fund, but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

The Department of Environmental Quality may release moneys from the Fund, on warrants issued by the State Comptroller, for covering the costs of the emissions inspection program. The moneys in this Fund may also be released for the purpose of long-term maintenance of air quality and the correction and prevention of nonattainment status for National Ambient Air Quality Standards through air quality programs under the direction of the Director.

§ 46.2-1183. Emissions inspection required prior to registration of certain vehicles; records.

No vehicle subject to the provisions of this article shall be registered or reregistered until it has passed an emissions inspection or has been issued an emissions inspection waiver. Any (i) proof of compliance with emissions standards and emissions inspection requirements and (ii) emissions inspection waiver issued for any motor vehicle shall be valid for two years from the end of the month in which it is issued, regardless of any sale or trade of the motor vehicle for which either document was issued during that time, unless such motor vehicle has failed on-road testing pursuant to § 46.2-1178.1 and has not subsequently passed an emissions inspection or received a waiver. Motor vehicles being titled for the first time shall be considered to have valid emissions inspection certificates for a period of two years from the month of first titling. The Commissioner of Motor Vehicles may enter into an agreement with the Director whereby the Department of Motor Vehicles may refuse to register or reregister those motor vehicles subject to emissions inspection programs set forth in this article if the registration period for such vehicles exceeds the valid emissions inspection period by a period of time to be determined by the Director in consultation with the Department of Motor Vehicles and the Commissioner.

Owners of motor vehicles that are not registered with the Department of Motor Vehicles shall maintain such records pertaining to all vehicles located or operated

in the areas specified in § 46.2-1178 as the Board may by regulation require. Such records shall contain proof of compliance with this article and be made available to the Department of Environmental Quality upon the Department's request.

§ 46.2-1184. Fleet emissions inspection stations.

Any registered owner or lessee of a fleet of at least twenty vehicles may apply to the Director for a permit to establish a fleet emissions inspection station consistent with federal requirements. The Director shall not issue any fleet emissions inspection station permit until he has found that the applicant:

1. Maintains an established place of business for the applicant's fleet of vehicles;
2. Has obtained approved machinery, tools, and equipment to adequately conduct the required emissions inspection in the manner prescribed by regulations of the Board;
3. Employs properly trained and licensed personnel to perform the necessary labor; and
4. Agrees to provide test records and data as may be prescribed by the Director.

Upon issuance of a permit by the Director, the owner or lessee of the motor vehicle fleet may conduct emissions inspections of the vehicles in his fleet. No emissions inspection approval shall be issued to any fleet vehicle until it has been inspected and found to comply with applicable regulations. No holder of a fleet emissions inspection station permit shall inspect any vehicle for which such permittee is not the registered owner or lessee.

§ 46.2-1185. Investigation of inspection stations; revocation or suspension of permits for emissions inspection stations.

The Director shall investigate the operation of each emissions inspection station and fleet emissions inspection station as the conditions and circumstances of such operation indicate. He may require the holder of any permit to submit such documentation required concerning the operation of such inspection station. The Director may suspend or revoke and require

the forfeiture of any emissions inspection station permit if he finds that such station is not operated in accordance with the provisions of this article and the regulations adopted by the Board or the holder of such permit has failed or refused to submit records or documentation required.

If the Director finds that any permit holder has violated any provision of this article or any order or regulation of the Board, after notice or a reasonable attempt to give notice to the permit holder, the Director may, without a hearing, suspend the permit of the emissions inspection station and require the permit holder immediately to cease performing emissions inspections. Within ten days of such action, the Director shall, after reasonable notice to the permit holder as to the time and place thereof, hold a hearing to affirm, modify, amend, or cancel the suspension and the requirement to cease performing emissions inspections. With the consent of the permit holder, the Director may forego such hearing and allow the suspension and requirement to cease performing emissions inspections to stand. If the Director finds that a permit holder is not complying with any such suspension or requirement to cease performing emissions inspections, the Director may proceed in accordance with § 46.2-1187 or § 46.2-1187.2.

Nothing in this section shall limit the Director's authority to proceed against the permit holder directly under § 46.2-1187 or § 46.2-1187.2.

§ 46.2-1186. False certificate.

No person shall make, issue, or knowingly use any imitation or otherwise counterfeit official certificate of emissions inspection. No person shall issue or cause or permit to be issued any certificate of inspection knowing it to be fictitious or knowing it to have been issued for a vehicle other than the vehicle identified on the certificate.

§ 46.2-1187. Penalties.

Any person violating this article shall be guilty of a Class 3 misdemeanor for the first offense and fined not less than \$100 nor

more than \$1,000 for each subsequent offense except as otherwise provided in this article. If any official emissions inspection station violates this article or regulations of the Director made pursuant hereto, the Director, in addition to or in lieu of such fine imposed by a court, may suspend the permit of the emissions inspection station or if, in the opinion of the Director, the facts warrant such action, the Director may revoke the authority and cancel the permit of such inspection station, whether or not the violation is a first offense against this article.

§ 46.2-1187.1. Right of entry.

Whenever it is necessary for the purposes of this article, the Executive Director or his duly authorized agent or employee at reasonable times may enter any establishment or upon any public or private property to obtain information or conduct surveys, audits, or investigations.

§ 46.2-1187.2. Compelling compliance with regulations and order of Board; penalty.

Any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation or order of the Board may be compelled to comply by injunction, mandamus, or other appropriate remedy. Without limiting the remedies which may be obtained under the foregoing provisions of this section, any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation or order of the Board or any provision of this article, shall, in the discretion of the court, be subject to a civil penalty of no more than \$25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the emissions inspection station owner's business, the severity of the economic impact of the penalty on that business, and the seriousness of the violation. Such civil penalties may, in the discretion of the court, be directed to be paid into the treasury of the county, city, or town in which the violation

occurred to be used to abate environmental pollution in whatever manner the court, by order, may direct. However, where the emissions inspection station owner is the county, city, or town or an agent thereof, the court shall direct the penalty to be paid into the state treasury.

With the consent of the emissions inspection station owner who has violated or failed, neglected, or refused to obey any regulation or order of the Board or any provision of this article, the Board may, in any order issued by the Board against such owner, provide for the payment of civil charges in specific sums, not to exceed the limit in the foregoing provisions of this section. Such civil charges shall be in lieu of any civil penalty which could be imposed under the foregoing provisions of this section.

Any penalty provided for in this section to which an emissions inspection station owner is subject shall apply to any emissions inspector or certified emissions repair mechanic employed by or at that station.

As to emissions inspection station owners, emissions inspectors, and certified emissions repair mechanics, minor violations as set forth in Board regulations may be punishable by letters of reprimand from the Department. Major violations as set forth in Board regulations may be punishable by probation, suspension and/or license or certificate revocation, depending on the nature and type of violation. Civil penalties may be imposed only for major types of violations.

The Board shall provide by regulation a process whereby emissions inspection station owners, emissions inspectors and certified emissions repair mechanics may appeal penalties for violations. Such regulations regarding the process to appeal penalties for violations shall provide that the appeal process shall be handled by a person other than the Program Manager for the applicable emissions program or one of his regional employees.

§ 46.2-1187.3. Vehicles used for investigations.



Motor vehicles owned by the Commonwealth and used solely for investigations pursuant to this article may be issued the same license plates as those issued for vehicles owned by private citizens. The Executive Director shall certify under oath to the Commissioner of the Department of Motor Vehicles the vehicles to be used solely for such investigations.

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